

AN ORDINANCE AMENDING ARTICLE 1149 OF THE CITY CODE RELATING TO PUBLIC NUISANCE TO PROVIDE FOR PLACING OF PUBLIC NUISANCE REMOVAL LIENS WITHOUT A COURT ORDER

WHEREAS, West Virginia Code § 8-12-5(23) permits the City to provide for the elimination of hazards to public health and safety and to abate or cause to be abated anything which in the opinion of a majority of the governing body is a public nuisance, but does not provide authority to recover the cost of eliminating such hazards by filing a lien against the property involved; and

WHEREAS, West Virginia Code § 8-12-16 permits the City to adopt ordinances regulating the repair, alteration or improvement, or the vacating and closing or removal or demolition of any buildings unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities or any other conditions prevailing in any dwelling or building, whether used for human habitation or not, which would cause such dwellings or other buildings to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare but does not specify that such ordinances may be adopted, or liens placed on property, for public nuisances identified by the City that do not meet the specific statutory categories; and

WHEREAS, pursuant to the authority granted to the City of Morgantown as a Home Rule Municipality under West Virginia Code § 8-1-5a, City Council is authorized to provide for the authority to file liens against real property without a court order for the costs to the City of abating a public nuisance on such property;

NOW THEREFORE, the City of Morgantown hereby ordains that Article 1149 of the City Code is amended as follows:

1149.01 PURPOSE; PUBLIC NUISANCE ABATEMENT.

Council may, by resolution, abate anything which, in the opinion of a majority of Council, constitutes a public nuisance after due notice to all parties that could be affected and after such hearings as Council deems necessary to ascertain a factual and rational basis for the abatement of any such public nuisance.

1149.02 APPLICATION.

The provisions of this article shall apply to all public nuisances as hereinafter designated which are now in existence or which may hereafter exist in the City.

1149.03 DEFINITION; PUBLIC NUISANCE.

(a) A public nuisance is one which affects an indefinite number of persons, or the residents of a particular locality, or people coming within the extent of its range or operation, although the extent of the annoyance or damage inflicted upon individuals may be unequal. Such public nuisance endangers the health, safety and welfare of the community and is dangerous and detrimental to the public health, may violate the laws of the City and/or State as well as obstructs the community from reasonable and comfortable use of property.

(b) A public nuisance may arise from the unreasonable, unwarrantable or unlawful behavior associated with the property, either real or personal, which hinders the neighboring community and the general public from enjoying the common and public rights enjoyed by the general community in like areas where no such public nuisance exists.

(c) For purposes of this article a continuing public nuisance is an uninterrupted or periodically recurring public nuisance, not necessarily a constant or unceasing injury, but a nuisance which occurs so often and is so necessarily an incident of the use of property complained of that it can fairly be said to be continuous. Such a nuisance may be of such character that its continuance is necessarily an injury which will continue without change.

(d) A continuing public nuisance may be found to be a permanent public nuisance when its continuance is necessarily an injury which will continue without change, unless Council takes such action to cease any like nuisance from becoming established and re-occurring at the particular location. It is not enough to show a slight interference to the public welfare and such will not be restrained unless the type of business or manner of operation is injurious to the public health, safety and welfare of the community or has a tendency to promote unlawful behavior or behavior which is considered by the City Administration, including its health and/or safety officials, to be a menace to public order and safety.

(e) The procedure by which the City of Morgantown will address public nuisances is set forth in the remaining sections of this article.

1149.04 REPORT, RECOMMENDATIONS TO COUNCIL AND HEARING.

Public safety and law enforcement officers, as well as affected members of the community, shall report findings and recommendations to the City Manager, and if the City Manager ascertains from the report and findings that the condition presents a public nuisance, as defined within this Article, the City Manager shall make his recommendation to City Council that just cause exists to abate the nuisance. Whereupon by a majority vote of City Council, a hearing shall be held after at least ten days' notice is provided to the property owner, tenant, business manager and/or licensee of the time and place of such hearing, which notice shall contain a statement or specifications of the charges, grounds or reasons for such proposed contemplated action, and which shall be served upon the property owner, tenant, business manager and/or licensee as notices under the West Virginia Rules of Civil Procedure or by certified mail, return receipt requested, and shall, in addition, be posted in a conspicuous place on the premises as well as within 100 feet surrounding such premises affected by the recommendation. The term "cause" shall include the doing or omitting of any act or permitting any condition to exist which causes a public nuisance as defined in this article. At which time and place, so designated in the notice, City Administration shall put forth its evidence in support of the recommendation made to City Council as well as the property owner, tenant, business manager and/or licensee shall have the right to appear and produce evidence in his/her/its behalf, and to be represented by counsel. At the conclusion of the hearing, City Council shall render a decision.

1149.05 FINDINGS OF CITY COUNCIL.

(a) At the conclusion of the hearing described in Section 1149.04, City Council will issue its findings on the matter. In doing so, it may determine that a public nuisance does not exist, or that a public nuisance does exist and in such case, what corrective action the property owner, tenant, business manager and/or licensee must take to eliminate the public nuisance and the time

period in which such action must take place. Additionally, upon a showing that there has been a continuing nuisance of similar character and circumstances at a particular location which meets the criteria for a permanent nuisance as set forth in Section 1149.03 of this article, City Council may declare such a permanent public nuisance and prohibit similar acts, occupations, types of businesses or structures at such location. In determining whether or not a permanent public nuisance exists, City Council shall consider reports of City administration, safety, and law enforcement officials, as well as public comment and complaints of the community spanning, at a minimum, a three year period immediately preceding the date of the hearing.

(b) Should any property owner, tenant, business manager and/or licensee fail to take the corrective action prescribed by City Council in the time period allotted, the City employees and/or agents of the City necessary to abate the nuisance may enter upon the property constituting a public nuisance and abate the conditions creating the nuisance, regardless of whether such nuisance constitutes a threat to public safety.

(c) If the City abates a nuisance as permitted by Section 1149.05(b), the City shall be entitled to a lien against the real property on which such nuisance was abated for all costs incurred in abating the nuisance, including the actual value of labor expended to abate the nuisance, without the necessity of obtaining a court order for such lien. The City may collect on such lien in the same manner as provided for liens for taxes or paving assessments, or by an action at law, or in any other manner provided by law for the collection of debts due to a municipality.

1149.06 RECONSIDERATION OF PERMANENT PUBLIC NUISANCE.

Should City Council declare a location to be a permanent public nuisance, any further use of that same location for the same use shall not be allowed; however, reconsideration by City Council of its Declaration of Permanent Nuisance may occur if such reconsideration request is filed in writing with City Council within three (3) months of City Council's decision on the matter. The relief requested in the petition for reconsideration may be granted by City Council if, in its opinion, the petitioner has presented it with sufficient information demonstrating that, more likely than not, the elements making up and causing the nature of the permanent public nuisance in question will be eliminated. The order of City Council in granting any such petition shall indicate that the use of the premises/realty at issue will be considered probationary for a period of one year from the date the use commences, and that any reoccurrence of similar activity which lead to the prior declaration of a permanent public nuisance or would lead to a new nuisance violation shall automatically reactivate City Council's previous determination that the site is a permanent public nuisance. In that event, upon written notice by the City Manager to and received by the Petitioner, such usage of the site shall cease immediately.

1149.07 APPEALS AND ENFORCEMENT.

In the event that such property owner, tenant, business manager and/or licensee may be aggrieved by such decision of City Council, which may include and not be limited to revocation or suspension of any licensures and/or the restricted use of such property having been declared a nuisance, petition for such review must be filed with the circuit court within a period of thirty days from and after the date of final action by Council. Any person, firm, corporation, landowner, licensee so affected has the right to apply to the circuit court for a temporary

injunction pursuant to the provisions of the W. Va. Code. The Municipality is also entitled to any and all appropriate judicial relief against public nuisances.

1149.08 STATE BUILDING CODE AND FIRE CODE.

This article shall not supersede those requirements and procedures set forth in either the West Virginia State Building Code or the West Virginia State Fire Code.

1149.09 SEVERABILITY.

If any section, subsection, provision, clause or phrase of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections, subsections, provisions, clauses or phrases or applications of this article and to this end each and every section, subsection, provision, clause and phrase of this article is declared to be severable. This article is in addition to and not dependent upon other articles of this Code.

This ordinance shall be effective upon date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

City Clerk

RECORDED: